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Secretary/Treasurer, Donna Pridmore, called the April 10, 2023, 310-meeting to order at 7:00 P.M. in the conference room.

Board members present: Donna Pridmore, Secretary/Treasurer; Scott Rumsey, Supervisor; Roger Marsonette, Supervisor; Gordon Ash, Supervisor; being a quorum of the Board.

Board members absent: Pete Woll, Chair; John Ellis, Vice Chair. Absences are excused.

Also, in attendance were Samantha Tappenbeck, Jessie Walthers, Ginger Kauffman, FCD Staff; Bill Yankee, Associate Supervisor; Kenny Breidinger & Leo Rosenthal, Fish, Wildlife & Parks; Chris Peterson, Hungry Horse News; Mikel Siemans, Core Water Consulting; Hailey Graf, DNRC CDB; Sharon Bengston; Mary T. McClelland; Tristan Scott, Flathead Beacon; Herb & Darlene Mains; Trent Baker, legal counsel for Ambler; Steve & Vernetta "Nettie" Wagoner & Josiah Wagoner, Wagoner's Sand & Gravel; Michael Mayen, IMEG Engineering; John & Stacy Ambler; Charles Bolte, KECI; Camisha Sawtelle, legal counsel for DNRC; Monica Jungster; Dave Wood; Zach Guenzler; Connie Boon; Mike Kopitzke; Patrick Sullivan; Bogdan Shkurinskiy; Dan Wallen; Duane Byrd, Glacier Canyon Trust; Chad & Katie Ridinger, 406 Docks.

CONSENT AGENDA

Consent Agenda Item 1: Signature Authority

- Authorization for Samantha Tappenbeck to sign on behalf of Supervisors attending the meeting virtually.

Consent Agenda Item 2: Minutes

- 3/13/2023 310-Meeting Minutes

Consent Agenda Item 3: Financial

Check Detail dated 3/29/2023:

1. Byte Savvy \$130.00
2. Montana Sky Networks Inc. \$10.00
3. Montana State University Bozeman \$5,000.00
4. USGS \$3,296.00

Consent Agenda Item 4: Correspondence

Roger Marsonette motioned "to approve the consent agenda." Scott Rumsey seconded. Motion carried unanimously.

PUBLIC COMMENT

Mikel Siemens, Core Water Consulting, explained a property on Farm to Market Road has silt around the end of a culvert that needs to be cleaned out and asked if an onsite inspection could be set as they have a narrow window to view the site and do the work. Mikel explained the details of the project. Samantha Tappenbeck reviewed the Adopted Rules process and noted that a pre-application site visit has been extended in some situations. Mikel explained that this is a maintenance project, not to alter the bed or banks of the stream; they just need to find where the screen is and make the intake active. Supervisors stated that if a complete application is submitted by next Monday 4/17/2023, it could be placed on the 4/24/2023 business meeting agenda.

310 Onsite Inspections

Barker, FL-2023-037, Flathead River, bank stabilization: Scott Rumsey motioned “this is a project.” Donna Pridmore seconded. Motion carried unanimously.

An onsite inspection was scheduled for Friday, April 21, 2:30 P.M. at the site.

Behr, FL-2023-034, Stillwater River, pond silt removal/re-seed: Donna Pridmore motioned “this is a project.” Scott Rumsey seconded. Motion carried unanimously.

An onsite inspection was scheduled for Wednesday, April 12, 9:00 A.M. at the site.

Buck, FL-2021-041C, Stoner Creek, complaint: Donna Pridmore explained to satisfy the complaint, the landowner was to submit an application for remediation work. Permit #FL-2021-106 expired 12/13/2022. Scott Rumsey contacted the landowner to do the Follow-Up Inspection, however, the landowner has not done the work. Donna stated it is a complaint and a violation, and asked what the next step would be. Samantha Tappenbeck reviewed Adopted Rule 19, subsections 1. **ORDERS ON VIOLATIONS**, which states:

1. If the district determines that issuance of an order is appropriate, the district shall send a letter to the violator, enclosing an order assessing a civil penalty not to exceed the statutory amount provided by statute per violation per day. The letter must identify the specific violation, the district finding on noncompliance, the required corrective action and time frames for compliance, the date the civil penalty commences, and the district’s intent to seek judicial enforcement of the civil penalty if it is not paid. If the violator takes corrective action within the required time frame, the district may waive the order for civil penalty.

Roger Marsonette motioned “that since this a violation and Buck has failed to do the work, we follow Adopted Rule 19 subsection 1, and send him a certified letter explaining the process.” Donna Pridmore seconded.

Additional discussion was held regarding civil penalties, when assessment may begin, and specifics of the letter. Samantha reiterated that the content of the letter includes identification of the specific violation, the district findings on noncompliance, the required corrective action and time frames for compliance.

Question called. Motion carried unanimously.

Donna Pridmore noted that Mr. Buck must submit an application for remediation, and that work must be completed by a certain date. Samantha reviewed corrective action in the remediation letter under FL-2021-041C dated 10/22/2021. She noted that the 8/9/2021 letter specified the same corrective action, and the deadline was for corrective work to be completed by 12/31/2021.

Roger Marsonette motioned “to set a completion date of 9/1/2023 to do the work, and if the work is not completed at that time the district will assess \$500/day until remediation work has been completed.” Donna Pridmore seconded. Motion carried unanimously.

Glacier Canyon Trust, FL-2023-039, Abbot Creek, barn: Gordon Ash stated he viewed the property, and noted that the application was incomplete. Accurate staking of the barn and house locations are needed. The landowner stated he would submit an addendum to the application prior to the next 310-meeting.

Guenzler, FL-2023-040, Swan River, house/excavation: Donna Pridmore motioned “this is a project.” Roger Marsonette seconded. Motion carried unanimously.

An onsite inspection was scheduled for Tuesday, April 11, 9:00 A.M. at the site.

Hodges, FL-2022-071, Giefer Creek, fill beaver pond: Scott Rumsey motioned “to table and send a letter to the applicant requesting a time when the site is free of snow, we could adequately view it.” Donna Pridmore seconded. Motion carried unanimously.

Levesque, FL-2023-029, Flathead River, bank stabilization: Scott Rumsey motioned “this is a project.” Donna Pridmore seconded. Motion carried unanimously.

An onsite inspection was scheduled for Friday, April 21, 10:30 A.M. at the site.

Patterson, FL-2022-066, Garnier Creek, bank stabilization, re-veg: Roger Marsonette explained a notice of emergency for replacing a culvert on an approach road to a private residence was submitted. A site visit was held, and the landowner was to submit a 310-permit application. Winter weather began and the application was tabled until the site was viewable. Roger stated he had concerns regarding the downstream aspects of the project in relation to the channel size. What was proposed in the application was just sloping the bank back, seedling, and allowing the buck brush (snowberry) to come back. He added that if the culvert gets maximum full, like it did last spring, there could be a considerable amount of erosion. Roger asked that a second supervisor attend the onsite inspection, and Kenny noted that the site should now be visible. Katie Ridinger stated she has now taken on this project, and asked FCD Staff for copies of the 310 documents.

An onsite inspection was scheduled for Friday, April 21, 12:30 at the site.

Shkurinskiy, FL-2023-038C, Mooring Creek, complaint: A complaint response was received 4/6/2023. An onsite inspection was scheduled for Friday, April 14, 10:00 A.M. at the site.

Shkurinskiy, FL-2023-041, Mooring Creek, bridge, or culvert: Gordon Ash motioned “this is a project.” Donna Pridmore seconded. Motion carried unanimously.

An onsite inspection was scheduled for Friday, April 14, 10:00 A.M. at the site.

Toth, FL-2023-036, Swift Creek, remove tree/debris: Donna Pridmore motioned “that FL-2023-036 is a project.” Roger Marsonette seconded. Motion carried unanimously.

Patrick Sullivan explained the tree is on the Foley property and he had discussed the project with the caretaker of the Foley property. Samantha Tappenbeck explained a phone call was received today from Foley. Foley did not want work done on their property. She noted that 310-permits are issued to the applicant, and it is the applicant’s responsibility to get permission from the landowner to do any work.

An onsite inspection was scheduled for Wednesday, April 12, 11:00 A.M. at the site.

Patrick Sullivan asked if he could get copies of permits for past work on the Toth property. Samantha informed him that he could contact the office.

Wood, FL-2023-035, Garnier Creek, bridge/home: Donna Pridmore motioned “this is a project.” Roger Marsonette seconded. Motion carried unanimously.

Discussion was held regarding the previous permit FL-2021-068 for Richard Ginette, which expired 9/13/2022. Kenny Breidinger stated it was unclear in the application if the stringers for the bridge conform to the load carrying capacity of highway standard HS20. Kenny noted if that information is provided, he would waive the onsite inspection, and approve with the same conditions listed in FL-2021-068.

Donna Pridmore motioned “to approve the application with modifications. Modifications are that the bridge standards will be added to the application and the modifications will be the same as in FL-2021-068.” Roger Marsonette seconded.

File FL-2021-068 was reviewed, and Roger noted that the bridge attachment submitted 9/7/2021 did not provide load requirements. The applicant stated he will provide the bridge specifications with load bearing information. As additional information was required, Donna Pridmore withdrew her motion and Roger Marsonette withdrew his second.

Donna Pridmore motioned “to table the application until additional information is submitted. Information must be submitted by May 1st.” Roger Marsonette seconded. Motion carried unanimously.

310's

Brazan, FL-2023-008, Stillwater River, pier: Donna Pridmore stated an onsite inspection was held 2/17/2023. Additional information was requested from the applicant, but that information has not yet been received.

Donna Pridmore motioned “to table.” Gordon Ash seconded. Motion carried unanimously.

Inspiration Drive, FL-2022-007, Whitefish River, path/ret wall/stairs: This application remains tabled until further information is received from the applicant.

Klempel, FL-2025-025, Boorman Creek, culverts: Donna Pridmore stated the site is not yet viewable and additional information has been requested from the applicant.

Donna Pridmore motioned “to table.” Gordon Ash seconded. Motion carried unanimously.

Sethre, FL-2023-028, Flathead River, tree removal: Scott Rumsey stated the onsite inspection held 3/24/2023, and the tree removal project is basic. Kenny Breidinger added that the tree was beginning to lean out over the stream. They will cut down the tree, leave the root wad in place and leave the tree in place for habitat.

Scott Rumsey motioned “to approve the application as proposed.” Donna Pridmore seconded. Motion carried unanimously.

Siblerud Properties LLC, FL-2023-032, Flathead River/Half Moon Slough, docks: Samantha Tappenbeck stated she attended the 3/28/2023 onsite inspection with Pete Woll and Kenny Breidinger. Donna Pridmore added that the Team Member Report recommends approving the application as proposed.

Donna Pridmore motioned “to approve FL-2023-032 as proposed.” Gordon Ash seconded.

Kenny stated the project doesn’t totally meet the Adopted rules. There are four relatives with strips of land next to each other that go right down to the slough. Instead of each landowner having a dock on their own property, they are proposing a u-shaped dock with 3 slips with an option to tie up on the end of one of the slips. The width of the dock, the part that is parallel to the shore, exceeds the Adopted Rules standard of 30-feet. However, the alternative is for each one to have their own dock and gangway lined up along this part of the slough.

Katie Ridinger stated if each landowner were to have their own (dock), and each person chose to do the maximum width of the 30-feet, that would be 120-feet wide of dock that would be going across that whole area versus just the 50-feet that they are requesting now. Katie explained there are four owners on the property, they are all siblings. Instead of all four of them submitting four separate applications for ownership of that piece of property, they chose to have one joint dock which has less square footage than if we did four single docks.

Samantha stated it is a floating dock that would be anchored at a single point, and then a couple of chained-in points to stabilize it. They would not be removing any vegetation to install the dock on the bank. The impacts seemed minimal compared to 4 separate docks.

Katie added they also went with a minimum width of dock to allow it to still be stable and tried to keep everything as small as possible.

Motion carried with one opposed.

Roger Marsonette explained the reason for his vote was in opposition because we need to follow dock length in the Adopted Rules. Donna questioned if it is 30-feet because of the water

depth. Kenny explained the “length” refers to the section of dock that is perpendicular to shore. Samanta noted the section in question would be considered the “wing” per the standard in the Adopted Rules, with the wing being the edge of the dock that forms the slip which is parallel to shore. The wing exceeds the length that is specified as a limit in the Adopted Rules. There was further review of the design in the application.

Scott Rumsey noted the Adopted Rules state one dock per ownership. Roger noted page 41 of the Adopted Rules, Section 8, DOCKS, WHARVES, PIERS, findings, sub-section e. states: Common streambank dock facilities, shared by more than one owner, reduce the overall environmental impacts on the streambed and bank and ease navigational congestion on the stream.

Roger withdrew his negative vote. Samantha noted that it important to document any deviation from the Adopted Rules, which we have through this discussion, even though it was not formally made as part of the motion.

Sneed (Chuck), FL-2022-057C, Meadow Creek, complaint: Samantha Tappenbeck stated this was previously tabled and the Board requested a Technical Review of the complaints and subsequently submitted applications. A limited solicitation was sent out for the technical review and the deadline for proposals is this Friday. The deadline was extended for the submission of an application for the work on Meadow Creek.

Sneed (Chuck), FL-2022-058C, Patterson Creek, complaint: Samantha Tappenbeck stated this was previously tabled and the Board requested a Technical Review of the complaints and subsequently submitted applications. A limited solicitation was sent out for the review and the deadline is this Friday.

Sneed (Chuck), FL-2023-009, Patterson Creek, stream diversion, excavation, irrigation/headgate: Samantha Tappenbeck stated this was previously tabled and the Board requested a Technical Review of the complaints and subsequently submitted applications. A limited solicitation was sent out for the review and the deadline is this Friday.

Turner, FL-2021-081C, Swan River, complaint: This complaint remains tabled until work under permit #FL-2022-008 is completed. The permit will expire 5/9/2023.

Wagoner’s Sand & Gravel, FL-2023-019, Flathead River, rip rap trench: Roger Marsonette explained that on 3/13/2023 the application was tabled, and a technical review was ordered. However, due to the timing of submittal of the application, a full technical review could not be completed prior to spring runoff. On 4/5/2023, the applicants submitted a copy of a letter from Flathead County Planning & Zoning requiring engineered documents and additional information on the project.

Roger Marsonette motioned “that the permit be denied.” Donna Pridmore seconded. Motion carried unanimously.

Steve Wagoner stated they have been in communication with Brad Bennett’s office and are looking into engineering costs. Supervisors noted that Wagoner’s would need to submit a new application once they have a suitable design.

NEW BUSINESS

Petition for Declaratory Ruling, McDonald Creek Violation: Samantha Tappenbeck explained this is just an informational update and discussion for the Board. The Petition for Declaratory Ruling was received 4/3/2023 and distributed to the Board for review.

Samantha stated that within 30 days of receiving the Petition for Declaratory Ruling, the Board needs to determine if this is a matter of significant public interest and to appoint a hearings officer by 5/3/2023. This must happen at a meeting before a quorum of the Board and will be placed on the business meeting agenda. How the Declaratory Ruling Process will proceed is outlined in Adopted Rules 20-22. Samantha reviewed Rule 21. Process for Declaratory Ruling with the Board.

Discussion held regarding consideration of a hearing officer. Hailey Graf noted that the hearings officer should be knowledgeable of the 310-law, have a background in natural resource management, is qualified and capable of doing legal research involved in this matter, but selection is at the Board's discretion.

Gordon Ash asked about continued work on the structure. Samantha reviewed Rule 18 subsection 3. of the Adopted Rules and stated the landowners and their representatives have indicated to the district verbally that no more construction is going on; that they have halted construction and buttoned up the house. The district would be within the process outlined in the Adopted Rules to issue a cease-and-desist order. She stated that the Amblers do have a deadline to complete corrective action by November 1, 2023, however they must have a 310-permit in place to do the work to remediate the violation and would need time to do the remediation. This is a time sensitive matter considering the landowners must have a 310 Permit in place in order to move forward with corrective action by the deadline of 11/1/2023.

DNRC counsel, Camisha Sawtelle agreed that a cease-and-desist order is allowed and appropriate; no work can officially occur until there is resolution of the Declaratory Ruling process. If there is a violation of that order, and they do continue doing work, then the district has the right to petition the court to enforce that order. Camisha noted that the letter from the landowner's legal counsel indicates they are asking for more time to do their research which is not a direct indication that they disagree with the finding of violation. The Amblers specifically ask for two different hearings: one on the issue of jurisdiction and one on the issue of violations in general. That is something else the Board needs to address later.

Donna Pridmore motioned "this is a matter of significant public interest based on the number of complaints received." Gordon Ash seconded. Motion carried unanimously. Roger Marsonette abstained from voting.

Roger Marsonette motioned "the board order a cease-and-desist order with regards to this project, to remain in effect until the matter is resolved." Donna Pridmore seconded. Motion carried unanimously.

The appointment of a hearings officer will be placed on the business meeting agenda.

MATTERS OF THE BOARD/STAFF

310-Training: Samantha Tappenbeck confirmed the 310-training is scheduled for 4/20/2023, 10:00 A.M.-2:00 P.M. in the conference room.

The next business meeting is scheduled for Monday, April 24, 2023, 7:00 P.M. in person and via ZOOM.

Adjournment: Donna Pridmore motioned “to adjourn.” Gordon Ash seconded. Motion carried unanimously. As there was no further business, the meeting was adjourned at 9:44 P.M.

Submitted By:
Ginger Kauffman
Administrator

Reviewed By:
Samantha Tappenbeck
Resource Conservationist

Minutes approved by FCD Board motion made on:

<u>5/8/2023</u>	<u>Pete Woll</u>	<u>Chair</u>
(Date)	(Signature)	(Title – Chair etc.)